

Message Text

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PAGE 01 KABUL 08925 01 OF 02 241149Z
ACTION NEA-10

INFO OCT-01 HA-05 ISO-00 JUSE-00 CIAE-00 DODE-00 PM-05
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SP-02 SS-15 USIA-06 IO-13 AID-05 /080 W
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R 241020Z DEC 77
FM AMEMBASSY KABUL
TO SECSTATE WASHDC 5762
INFO AMEMBASSY ISLAMABAD
AMEMBASSY NEW DELHI
AMEMBASSY TEHRAN

LIMITED OFFICIAL USE SECTION 1 OF 2 KABUL 8925

DEPT PLEASE PASS ALSO TO D/HA

E.O. 11652: NA
TAGS: PGOV, SHUM, AF
SUBJ: LEGAL SEMINAR STRESSES BASIC REFORM AND MODERNIZATION
OF THE AFGHAN LEGAL SYSTEM

1. SUMMARY: A RECENT TEN-DAY SEMINAR, ATTENDED BY PROVINCIAL JUDGES AND LAWYERS, AS WELL AS BY SENIOR JUDICIAL OFFICIALS IN KABUL, STRESSED THE IMPORTANT ROLE OF LAW IN HUMAN SOCIETY, HIGHLIGHTED THE ACHIEVEMENTS THUS FAR IN THE REGIME'S LEGAL REFORM PROGRAM, AND HINTED THAT FURTHER LAWS (ESPECIALLY THOSE GOVERNING JUDICIAL PROCEDURE AND ADMINISTRATION) MIGHT BE PROCLAIMED SOON. ADDRESSING THE SEMINAR, PRESIDENT MOHAMMAD DAOUD EMPHASIZED THE DIFFICULTIES INHERENT IN THE COMING IMPLEMENTATION PHASE OF THE REGIME'S LEGAL REFORM PROGRAM. IT IS CLEAR THAT MODERNIZATION OF THE LEGAL SYSTEM IS AN IMPORTANT ELEMENT OF THE GOVERNMENT'S OVERALL POLITICAL-SOCIAL REFORM PROGRAM, AND DAOUD'S ADDRESS TO THE SEMINAR INDICATES THAT HE HAS PERSONAL AND POLITICAL INTEREST IN SEEING FURTHER PROGRESS MADE IN THIS FIELD. END SUMMARY.

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PAGE 02 KABUL 08925 01 OF 02 241149Z

2. THE PROCEEDINGS: THE TEN-DAY SEMINAR WAS OPENED ON DECEMBER 10 IN KABUL BY MINISTER OF JUSTICE WAFIULLAH SAMAYEE, WHO ALSO SERVES AS INTERIM CHIEF JUSTICE OF AFGHANISTAN. IN HIS INITIAL ADDRESS, SAMAYEE STRESSED THE IMPORTANCE OF THE RECENTLY PROCLAIMED PENAL AND CIVIL CODES, AND CALLED THEM "THE MAIN PILLARS" OF THE SOCIETY'S LEGAL SYSTEM. HE ADDED, HOWEVER,

THAT THE ISLAMIC SHARIAT REMAINS THE PRINCIPAL SOURCE OF AFGHAN JURISPRUDENCE, AND THAT ALL LAWS PROMULGATED UNDER THE POST-1973 REGIME ARE COMPATIBLE WITH TRADITIONAL ISLAMIC LAW.

3. OVER THE FOLLOWING FEW DAYS, THE SEMINAR DIVIDED INTO FOUR COMMISSIONS FOR MORE CONCENTRATED DELIBERATIONS BEFORE RECONVENING IN A FINAL PLENARY SESSIONS TO HEAR THE RESULTS OF THESE DETAILED DISCUSSIONS. THE FOUR WORKING COMMISSIONS WERE: THE CRIMINAL PROCEDURAL LAW COMMISSION, CHAIRED BY DR. ENAYATULLAH EBLAGH; THE LAW COMMISSION, UNDER MOHAMMAD MOOSA ASHARY; THE CRIMINAL CODE COMMISSION, HEADED BY MOHAMMAD ANWAR WAHIDI; AND, THE CIVIL CODE COMMISSION, CHAIRED BY MOHAMMAD ISMAIL QASEMYAR. ALL FOUR CHAIRMEN ARE MEMBERS OF THE HIGH JUDICIARY COUNCIL -- WHICH IS SERVING AS HIGHEST JUDICIAL BODY UNTIL THE SUPREME COURT IS APPOINTED ON JUNE 22, 1978 (AS REQUIRED BY ARTICLE 126 OF THE NEW CONSTITUTION).

4. ACCORDING TO PRESS REPORTS, THE SEMINAR'S WORKING SESSIONS INCLUDED DISCUSSIONS OF NEW DRAFT LAWS GOVERNING CRIMINAL PROCEDURE, TRAFFIC, AND JUDICIAL ORGANIZATION. THESE DRAFT LAWS WERE REPORTEDLY SUBMITTED TO THE SEMINAR'S FINAL PLENARY SESSION, A STEP WHICH COULD MEAN THAT FINAL LAWS IN THESE AREAS MIGHT BE FORTHCOMING IN THE NEAR FUTURE.

5. MEETING WITH THE PRESIDENT: PRESIDENT DAOUD MET WITH THE SEMINAR'S PARTICIPANTS ON THE CLOSING DAY, AND ADDRESSED THEM

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PAGE 03 KABUL 08925 01 OF 02 241149Z

ON THE ROLE OF LAW IN PRESENT DAY SOCIETY. DAOUD ECHOED SOME OF SAMAYEE'S THEMES AS HE EMPHASIZED THE NECESSITY FOR GUARANTEEING JUSTICE AND SECURITY IN MODERN SOCIETY, AFFIRMED THAT THE NEW LAWS PROMULGATED BY HIS REGIME ARE COMPATIBLE WITH THE FUNDAMENTALS OF THE ISLAMIC SHARIAT, AND STRESSED THAT THESE LAWS "CONSTITUTE THE BACKBONE" OF JUSTICE IN AFGHAN SOCIETY. HE ALSO POINTED OUT THAT THE NEW LAWS REPRESENT AN ESSENTIAL ELEMENT OF THE "FUNDAMENTAL REFORMS" IN THE SOCIAL, ECONOMIC, AND CULTURAL LIFE OF AFGHANISTAN WHICH HAVE BEEN UNDERTAKEN BY HIS REPUBLICAN REGIME.

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PAGE 01 KABUL 08925 02 OF 02 241151Z

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R 241020Z DEC 77
FM AMEMBASSY KABUL
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LIMITED OFFICIAL USE SECTION 2 OF 2 KABUL 8925

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6. COMMENT: REFORM OF THE AFGHAN LEGAL SYSTEM IS ONE OF THE PRINCIPAL PLANKS OF DAOUD'S OVER-ALL POLITICAL-SOCIAL REFORM PROGRAM FOR AFGHANI-ISTAN -- AND IS NOW THE PRIMARY AREA IN WHICH THIS COUNTRY IS DISPLAYING SOME SOLID PROGRESS IN IMPROVING HUMAN RIGHTS. THE NEW CRIMINAL AND CIVIL CODES REPRESENT INITIAL SIGNIFICANT STEPS IN THIS EFFORT, AND, SHOULD THE EXPECTED NEW LAWS AND REGULATIONS GOVERNING JUDICIAL ORGANIZATION, ADMINISTRATION, AND PROCEDURE BE PROCLAIMED, THE REGRME, AT LEAST IN THEORY, WOULD BE WELL ON ITS WAY TOWARD A FULL-SCALE REVISION OF THIS COUNTRY'S LEGAL SYSTEM. ALTHOUGH SUCH A REFORM MIGHT APPEAR TO BE HIGHLY AMBITIOUS FOR A TRADITIONALISTIC, DEVELOPING COUNTRY LIKE AFGHANISTAN, THE CURRENT LEADERSHIP APPEARS FULLY COGNIZANT OF THE DIFFICULTIES INVOLVED IN THE COMING IMPLEMENTATION PHASYGN BUT IS DETERMINED TO PUSH IT THROUGH. IN THIS REGARD, LIMITED OFFICIAL USE

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PAGE 02 KABUL 08925 02 OF 02 241151Z

DAOUD'S CLOSING REMARKS STRESSED THAT, WHILE WRITING LAWS MAY BE A SIMPLE MATTER, THEIR APPLICATION IS DIFFICULT. FINALLY, THE TENOR OF THE PRESIDENT'S COMMENTS, AND HIS MEETING WITH THE SEMINAR'S PARTICIPANTS, INDICATE THAT HE HAS INVESTED HIS OWN PERSONAL, AS WELL AS POLITICAL, PRESTIGE IN THIS LEGAL REFORM PROGRAM, AN INVESTMENT WHICH COULD CONCEIVABLY ENSURE THAT ADDITIONAL FORWARD MOVEMENT IN THIS FIELD WILL BECOME MORE CLEARLY EVIDENT IN THE NEAR FUTURE.

7. FOR OUT PART, WE ARE ESPECIALLY PLEASED TO
NOTE SO MANY AFGHAN JUSTICE OFFICIERS WITH USAID-
ASSISTED U.S. LEGAL TRAINING PARTICIPATING IN THIS
VITAL REFORM PROGRAM. WE HAVE ALSO NOTED WITH
SATISFACTION THAT THE JUDICIAL FIELD IS ONE AREA
OF AFGHAN PROFESSIONAL LIFE WHERE WOMEN ARE BECOMING
INCREASINGLY UTILIZED IN SIGNIFICANT POSITIONS.
THYCE IS NOW ONE FEMALE JUDGE IN KABUL -- AND MORE
THAN A DOZEN FEMALE PROSECUTORS. MANY OF THESE
WOMEN WERE AMONG THOSE WHO RECEIVED ADDITIONAL
LEGAL TRAINING IN THE U.S. UNDER AID'S NOW CONCLUD-
ING LEGAL TRAINING PROGRAM AT GEORGE WASHINGTON
UNIVERSITY. THIS PARTICULAR TRAINING INVESTMENT
HAS PRODUCED
HIGHLY VISIBLY,SCONCRETE RESULTS IN
AFGHANISTAN -- LEADING TO MEANINGFUL ADVANCES IN THE
AREA OF HUMAN RIGHTS.
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